

# Exhibit 167

*United States of America ex rel. Ven-a-Care of the Florida Keys, Inc. v. Boehringer Ingelheim Corp. et al.*

Civil Action No. 07-10248-PBS

Exhibit to the July 24, 2009, Declaration of James J. Fauci  
In Support of Plaintiff's Motion for Partial Summary Judgment and  
In Opposition to the Roxane Defendants' Motion For Partial Summary Judgment

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UNITED STATES DISTRICT COURT

DISTRICT OF MASSACHUSETTS

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IN RE: PHARMACEUTICAL ) MDL NO. 1456

INDUSTRY AVERAGE WHOLESALE ) CIVIL ACTION:

PRICE LITIGATION ) 01-CV-12257-PBS

-----X Judge Patti B. Saris

U.S. ex re. Ven-A-Care of )

the Florida Keys, Inc., v. )

Abbott Laboratories, Inc., )

et al. No. 06-CV-11337-PBS )

-----X

VIDEOTAPED DEPOSITION OF ADMINASTAR FEDERAL

by CHERYL EILER - VOLUME II

The continuation of the videotaped deposition of  
 ADMINASTAR FEDERAL by CHERYL EILER, produced and  
 sworn before me, Aprille Lucas, RPR, Notary Public  
 in and for the County of Hamilton, State of Indiana,  
 taken on behalf of the Defendant Dey at the offices  
 of National Government Services, 8115 Knue Road,  
 Indianapolis, Indiana, August 27, 2008, at 9:06 a.m.,  
 pursuant to the Federal Rules of Civil Procedure.

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A P P E A R A N C E S

FOR THE UNITED STATES OF AMERICA:

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(CONTINUED)

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1 pay all the claims that came in for the third  
2 quarter of 1998, is that correct?

3 A. For the -- as far as any claim we  
4 received for 1998 in that time frame, yes.

5 Q. So it's not possible that only, that  
6 one of these would have been affected for a  
7 portion of that quarter, and then another one  
8 would be --

9 A. No.

10 Q. Now, if we flip to the next document,  
11 which is Bates number AWP036-2536, this appears  
12 to be a document -- or I'm sorry, an array for  
13 the fourth quarter of 1998, is that right?

14 A. Yes.

15 Q. Now, one question I had with regard to  
16 the first Dey price, which in this case it also  
17 was not considered, is that right?

18 A. Yes.

19 Q. Under the form column it indicates SOL,  
20 IH, and then PF is in parentheses. Do you have  
21 any sense as to what that code mean?

22 A. That means it was listed as

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1 preservative-free, so that is one of those ones  
2 that we would not have used. So that is why it  
3 was pulled, probably.

4 Q. And you did not include this  
5 preservative-free form, based on guidelines from  
6 HCFA, is that right?

7 A. Based on clarification that we received  
8 from CMS that we would not include those unless  
9 it was in the narrative description of the code.

10 Q. To your knowledge, did the other  
11 carriers also exclude this particular price from  
12 the arrays?

13 A. It was my understanding that we were  
14 all consistent in that, yes.

15 Q. And you indicated that you contacted  
16 HCFA to seek clarification with regard to  
17 preservative-free solutions, is that right?

18 A. We asked for clarification on certain  
19 things, yes.

20 Q. And you recall specifically requesting  
21 clarification on preservative-free solutions?

22 A. Yes.

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1 Q. And HCFA indicated to you that they  
2 should not be included?

3 A. Only if it was the only thing  
4 available, or the narrative description stated  
5 that.

6 Q. Now, it indicates, if we flip to the  
7 next page of this document, which is Bates number  
8 AWP039-1229, this appears to be for the third  
9 quarter of 1999, is that right?

10 A. Yes.

11 Q. Now, I submit to you that I was unable  
12 to find the first two quarters of 1999. Do you  
13 recall if you prepared arrays for ipratropium  
14 during that time?

15 A. Without pulling my folder, I can only  
16 say that I would have checked that drug for those  
17 quarters. Now, whether there was an update or  
18 not, without looking, I would not be able to tell  
19 you.

20 Q. If there was no update to the pricing  
21 for those quarters, would you have still prepared  
22 a separate array for those two quarters?

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1           A.     What I would normally do is like I  
2     would have taken the July array and used it as a  
3     comparison for the October or the next quarter; I  
4     would use it for the next one.

5                 So there would have been a sheet in the  
6     folder for the July in the October folder, and  
7     then I would have checked it. I tried to make  
8     sheets for each quarter. I don't know what  
9     happened to those two quarters, without going  
10    back.

11           Q.    Do you recall any quarters where you  
12    did not make sheets for all of the drugs at issue  
13    that you were pricing?

14           A.    I did not update them every -- I did  
15    not do a printout every quarter. I did look at  
16    every code every quarter. And if there was no  
17    changes, then that's what would have stayed in  
18    that folder.

19           Q.    Now, in this document, which is for the  
20    third quarter of 1999, it indicates in the source  
21    field April '99 RedBook database. What does that  
22    phrase represent?

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1           A.     That's when we started getting the CD  
2     rom program quarterly for the RedBook. We still  
3     received the monthly and the annual, but we used  
4     the online, because it was more updated than the  
5     books.

6           Q.     So you indicate that, by database,  
7     you're referring to the CD roms?

8           A.     The CD rom program, yes.

9           Q.     If you recall, we discussed yesterday  
10    that Palmetto had a RedBook database. Is that  
11    something different than the database that you're  
12    referring to here?

13          A.     I don't know how they referred to  
14    theirs. That's just the way I referred to it.

15          Q.     So you referred to the CD roms --

16          A.     As the database.

17          Q.     -- as the database. Do you recall if  
18    you kept printouts or electronic copies of the  
19    quarterly RedBook CDs as you received them?

20          A.     No. The only thing I would keep copy  
21    of is if there was a change, then I would take a  
22    print of the screen to indicate the change,



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1 MR. HENDERSON: Objection.

2 A. No.

3 BY MS. RAMSEY:

4 Q. Looking at the next bullet below, and  
5 this is just a general pricing question, not  
6 necessarily related to the DOJ AWP's, it says, the  
7 DMERCs eliminated certain types of forms when  
8 establishing their fees, for example, carpu-ject  
9 and preservative-free items. These items were  
10 shown to be more expensive.

11 Do you see that?

12 A. Yes.

13 Q. I'd like to talk about this bullet for  
14 just a minute. Now, this is indicating that in  
15 certain situations certain products or forms are  
16 not used in the calculation of median prices,  
17 correct?

18 A. Correct.

19 Q. And here are two examples were  
20 mentioned, and am I pronouncing that correctly,  
21 carpu-ject?

22 A. That's the way I would have pronounced

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